Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
10/532,635	HUMMEL ET AL.	
Examiner	Art Unit	
William P. Watkins III	1794	

The MAILWIN DATE of this communication appears on the cover sheet with the correspondence address THE REPLY FILED 12 May 2009 FALS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. I. ■ The reply was filled after a final rejection, but prior to or on the same day as filling a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affaditivit, or other evidence, which places the processing of the control of		William P. Watkins III	1794			
 1. ■ The reply was filled after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandomment of this application, applicant must intelly file one of the following replies: (1) an amendment, affidative, or other evidence, wich places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 4.1.14. The reply must be filed within one of the following time periods: a) The period for reply expires @ months from the mailing date of the final rejection. b) The period for reply expires on: (1) the mailing date of the final rejection. Examiner Note: If box is checket, check either box (a) or (b). ONLY CHECK BOX (b).WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS Of THE FIRMA REJECTION. See MFEP 705.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee naver been fled is the date for purposes of determining the period of detension and the corresponding amount of the fee. The appropriate extension fee nater 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened studyor period for reply originally set in the final Cffice action; (c) as many roduce) any exame plaint in term adjustment. See 37 CFR 1.74(b). NOTICE OF APPEAL. a) The Notice of Appeal was filed on A brief in compliance with 37 CFR 4.137(e), to avoid dismissal of the appeal. Since a Notice of Appeal was been flief, any reply must be filed within the time period set forth in 37 CFR 4.137(a). b) The Protice of Appeal was been flief, any reply must be filed within the time period set forth in 37 CFR 4.137(a). c) The Protice of Appeal was been flief, any reply must be filed within the time period set forth in 37 CFR 4.137(a). d) They rais	The MAILING DATE of this communication appe	ars on the cover sheet with the c	correspondence add	ress		
application, applicant must timely file one of the following replies: (1) an amendment, afficiavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 4.1.14. The reply must be filed within one of the following time periods: a) \(\begin{align*} The period for reply expires 5_months from the mailing date of the final repiction. The period for reply expires 5_months from the mailing date of the final repiction. The period for reply expires 5_months from the mailing date of the final repiction. The period for reply expires 5_months from the mailing date of the final repiction. Examiner Note: If box 1 is checked, check either box (a) or (b), NUTY CERCE BOX (b) WHEN THE EIRST REPLY STILLS FILES	THE REPLY FILED 12 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.					
no event, however, will the statutory period for reply expire son: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS 67 THE FINAL REJECTION. See WFEP 760 607(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the pelition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) assist forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any semed patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL. □ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). NOTE: A brief of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). ABENDMENTS: □ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); □ They raise the issue of new matter (see NOTE below); □ They raise the issue of new the proposed amendment (see Application in better form for appeal by materially reducing or simplifying the issues for appeal, and/or the propos	application, applicant must timely file one of the following application in condition for allowance; (2) a Notice of Appe for Continued Examination (RCE) in compliance with 37 C	replies: (1) an amendment, affidavireal (with appeal fee) in compliance	t, or other evidence, w with 37 CFR 41.31; or	hich places the (3) a Request		
have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shorthead statutory period for reply originally set in the final Office action, or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL 2. The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE:	b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire la Examiner Note: If box 1 is checked, check either box (a) or (MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f	dvisory Action, or (2) the date set forth ater than SIX MONTHS from the mailing b). ONLY CHECK BOX (b) WHEN THE c).	g date of the final rejection FIRST REPLY WAS FI	on. LED WITHIN TWO		
filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(a)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3.	have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).					
3.	filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).					
appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE:	3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below);					
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s): 6. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) objected to: Claim(s) withdrawn from consideration: AFFIDAVIT OR OTHER EVIDENCE 8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment. 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s)	appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims.					
non-allowable claim(s). 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) objected to: Claim(s) withdrawn from consideration: AFFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment. 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). //William P. Watkins III/	4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. Applicant's reply has overcome the following rejection(s):					
how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 11-15.17-20.22,23,25-27 and 29-34. Claim(s) withdrawn from consideration: AFFIDAVIT OR OTHER EVIDENCE 8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. ☑ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment. 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) /William P. Watkins III/	non-allowable claim(s).					
Claim(s) rejected: 11-15.17-20.22.23.25-27 and 29-34. Claim(s) withdrawn from consideration: AFFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment. 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) /William P. Watkins III/	how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows:					
8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment. 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). (William P. Watkins IIII/	Claim(s) objected to: Claim(s) rejected: 11-15,17-20,22,23,25-27 and 29-34. Claim(s) withdrawn from consideration:					
entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment. 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) 13. Other:	because applicant failed to provide a showing of good and					
REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment. 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 13. Other: /William P. Watkins III/	entered because the affidavit or other evidence failed to o	vercome <u>all</u> rejections under appea	ıl and/or appellant fail	s to provide a		
see attachment. 12. Note the attached Information <i>Disclosure Statement</i> (s). (PTO/SB/08) Paper No(s) 13. Other: /William P. Watkins III/	·	n of the status of the claims after er	ntry is below or attach	ed.		
13. ☐ Other: /William P. Watkins III/	·					
			nit 1794			